U.S. Department of Justice

Immigration and Naturalization Service

*OFFICE OF ADMINISTRATIVE APPEALS*
*425 Eye Street N.W.*
*ULLB, 3rd Floor*
*Washington, D.C. 20536*

B2

[redacted]

File: WAC 98 219 52011 Office: California Service Center Date: NOV 29 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

**Public Copy**

IN BEHALF OF PETITIONER:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an acrobat. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award).

Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner's initial submission did not clearly address which of the criteria he intended to meet, but the evidence falls most readily into the following criteria.

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

Counsel states that the petitioner won the Yellow Crane Silver Cup Award at the China Wuhan City International Acrobatic Competition in 1992 and 1994. Contemporary documents indicate that, at the 1994 competition, there were 30 competing groups, three of whom received Yellow Crane Awards. In 1992, there were either 22 or 28 competing groups (the documentation is unclear). The record contains several newspaper articles about the competitions, none of which mention the petitioner specifically.

Documents in the record show that the awards went not to the petitioner individually, but to the China Wuhan City Acrobatic Group. The record does not establish the extent of the petitioner's contribution

Counsel states that the petitioner won a Certificate of Honor at the Shenzhen Zhuhai International Arts Festival of China in 1989. This certificate does not indicate that the petitioner won any prize; its stated purpose is to acknowledge the petitioner's participation. It would appear that every participant received such a certificate.

The petitioner received the First Award at the Honan Arts Festival, 1988. The record contains no evidence that this prize is nationally or internationally recognized.

*Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The petitioner has submitted published materials about competitions in which he participated, and about acrobatic troupes with which he has performed, but no materials about him, or that even mention him by name. Many of the publications are local newspapers, publicizing upcoming appearances by the Carson & Barnes Circus.

Beyond the evidentiary criteria, the petitioner has submitted letters from various promoters and troupe directors, who attest to

the petitioner's talent but do not demonstrate or claim that the petitioner is among the best-known figures in his field.

Similarly, letters from Chinese officials attesting to the petitioner's participation in international goodwill tours assert that the petitioner is a highly talented acrobat, but there is no consistent indication that the petitioner is nationally or internationally acclaimed as being among the very top acrobats.

The director denied the petition, stating that the petitioner's work with various groups does not establish that the petitioner, as an individual, has won sustained national or international acclaim indicative of extraordinary ability.

On appeal, counsel argues that the petitioner has won "at least four nationally acclaimed awards" as described above. Counsel does not, however, present any evidence to establish the national acclaim of these awards. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel argues that the petitioner has satisfied another criterion:

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

Counsel asserts that the petitioner "was . . . a member of the prestigious Wuhan Acrobatic Troupe which recruited only top level performers." This appears to constitute employment rather than membership in an organization. Furthermore, an employer's high standards do not demonstrate that its employees assume national acclaim through such employment. Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

> The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

This same standard plainly applies here; membership in a prestigious troupe does not confer acclaim on every member.

The petitioner has shown that he is a prolific and talented artist, who has toured several countries as a performer. The record, however, does not establish that the petitioner is among the best-

known acrobatic performers at either a national or an international level.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as an acrobat to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as an acrobat, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.